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No. 104

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In the Supreme Court of the United States

October Term, 1961

JAMES DANIEL [illegible], Petitioner,

v.

[illegible] STATES OF AMERICA

[illegible] TO THE UNITED
[illegible]

[illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 225

JAMES GAMEY IDEN, *Petitioner*

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Vol. II, 3-12; Pet. App. 11-20) has not yet been reported.[1]

JURISDICTION

The judgment of the court of appeals was entered on May 22, 1962 (Vol. II, 3, 13; Pet. App. 11). The Chief Justice extended the time for the filing of a petition for a writ of certiorari to July 6, 1962, and the petition was filed on July 3, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] The record consists of two separately paginated volumes. Record references will be made to appropriate volume and page numbers.

QUESTION PRESENTED

Whether petitioner's arrest and the search of his person incident thereto were founded on probable cause.

STATUTE INVOLVED

Section 7607 of Title 26, U.S.C., provides in pertinent part:

> The Commissioner * * * and agents, of the Bureau of Narcotics of the Department of the Treasury * * * may—
>
> * * *
>
> (2) make arrests without warrant for violations of any law of the United States relating to narcotic drugs * * * where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

STATEMENT

A two-count indictment returned in the United States District Court for the Eastern District of Virginia charged the petitioner with having received and concealed narcotics with knowledge of their unlawful importation into the United States, and with having purchased and dispensed narcotics not in or from the original stamped package, in violation of 21 U.S.C. 174 and 26 U.S.C. 4704(a) (Vol. I, 1-2). After a jury trial in September 1961, the petitioner was found guilty as charged (Vol. I, 104, 262-263). He was sentenced, as a second offender, to concurrent terms of imprisonment of 20 years and fines of $1,000 on each count (Vol. I, 103, 104, 265). The conviction was affirmed on appeal (Vol. II, 3-12, 13; Pet. App. 11-20).

Before trial, the petitioner moved under Rule 41(e), F.R. Crim. P., to suppress evidence obtained from him at the time of his arrest on the ground that he had been subjected to an illegal search and seizure (Vol. I, 6-7). The motion was denied after a hearing (Vol. I, 97). Pertinent facts adduced at the hearing may be summarized as follows:

From 1958 to early 1961, the petitioner had been under intermittent surveillance for suspected narcotic activities by agents of the Bureau of Narcotics in the District of Columbia (Vol. I, 15, 36-40, 56, 60-61, 66, 74-75; see Vol. I, 14, 19, 35, 53). Petitioner had been observed in the company of known narcotic violators and had frequented establishments where the agents suspected narcotics were being distributed (Vol. I, 37-40, 60-61, 66).

In March 1961, one Worthington Alston, an informer for the Bureau of Narcotics in New York City, told a narcotics agent in New York that the petitioner would travel from the District of Columbia to New York on March 31, 1962, for the purpose of obtaining narcotics (Vol. I, 78-80, 83-84, 87; see Vol. I, 17-18, 43-44). This information was relayed to the Bureau's field office in the District of Columbia (Vol. I, 17-18, 43-44, 73, 75-78, 83-84).

On the morning of March 31, 1961, narcotics agents from the District of Columbia field office saw petitioner board an airplane for New York City (Vol. I, 14, 20, 22, 43-44, 67-68). The agents learned that the petitioner had purchased a round-trip ticket to New York City under the name of "C. Green" (Vol. I, 20, 25, 40; see Vol. I, 69). The Bureau in New York was notified that the petitioner was on his way there (Vol. I, 45).

Later that day, in New York City, a narcotic agent from the New York office followed the petitioner to a location known to have been frequented by many narcotic violators and suspects (Vol. I, 56-57, 76-78). In the afternoon, a narcotic agent observed the petitioner board an airplane for Washington, D. C. An agent of the New York office informed the District of Columbia field office of the flight petitioner had taken and said that the petitioner had a "large quantity of heroin" with him (Vol. I, 24-25, 27-28, 49, 51, 55, 57, 59, 69-71; see Vol. I, 47-49). On his arrival at the Washington National Airport, the petitioner was arrested by narcotic agents (Vol. I, 30-32, 34, 42, 50, 53, 71). During a search of the petitioner's clothing, the agents found two packages of heroin in the pockets of his overcoat (Vol. I, 32, 42, 72).

In January 1961, the informer Alston had been under indictment in the District Court for the Eastern District of Virginia on false claim and false statement charges (Vol. I, 269-270). On January 25, 1961, the district court, on motion of counsel for Alston, ordered a mental examination as to Alston's competency to stand trial (Vol. I, 272, 275, 277-278). On March 15, 1961, the Acting Superintendent of St. Elizabeth Hospital in the District of Columbia informed the court that Alston had been examined by staff psychiatrists and had been found to be mentally competent to understand the nature of the proceedings against him and to assist in his own defense (Vol. I, 271). At the time of the hearing on the motion to suppress (July 1961), Alston was under indictment in the District Court for the Southern District of New York on another charge, and was a fugitive from justice (Vol. I, 86).

ARGUMENT

Petitioner contends (Pet. 4-7) that his arrest without a warrant was unlawful because the agents did not have reasonable grounds to believe that he had committed or was committing a felony. He argues that the "basic information" in support of his arrest came from Alston who was shown by the record to be a disreputable and untrustworthy person.

As shown by the Statement, however, the petitioner was not arrested solely upon the information supplied by Alston. Alston's "tip"—that the petitioner would leave the District of Columbia for New York on March 31, 1961 for the purpose of obtaining narcotics—was corroborated by narcotic agents in the District of Columbia and New York. The arresting agents knew that, on March 31, 1961, the petitioner had purchased a round-trip airlines ticket for New York City under a fictitious name; that he had been seen in New York at a location frequented by narcotic violators; and that he was returning to Washington the same day. The agents also knew that petitioner had a criminal record as a narcotic violator and, since then, had continued to frequent places where it was suspected narcotics were sold. These items of information sufficiently corroborated the informer to justify petitioner's arrest under 26 U.S.C. 7607, *supra*. See *Draper* v. *United States*, 358 U.S. 307, 312-314. The search of the petitioner and the seizure of the heroin found inside his overcoat were proper incidents of his lawful arrest.[2]

[2] This case does not revive the debate how far a search incident to a valid arrest may stray. For everyone agrees that the person of the individual arrested and the clothes he wears, at least, may be searched without a warrant. See *United States* v. *Rabinowitz*, 339 U.S. 56, 60-63, 72-73 (dissenting opinion); *Abel* v. *United States*, 362 U.S. 217, 235-237, 248-253 (dissenting opinion).

It is doubtful that there was time to get a warrant since the District of Columbia agents had not fully confirmed the information given until petitioner boarded the plane in New York for Washington. The time required for a plane trip between New York and Washington would be a very short interval in which to prepare the necessary papers and get them signed. But even assuming that there was time, the agents were not required to have a warrant to make an arrest. Under 26 U.S.C. 7607, agents may arrest without a warrant on probable cause to believe that a person has committed a felony pertaining to narcotics.[3]

CONCLUSION

For the reasons set forth, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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[3] *Chapman* v. *United States*, 365 U.S. 610, is not to the contrary. In that case, this Court merely held that a search without a search warrant of a dwelling occupied by a tenant (who was not arrested until he returned to the dwelling after the search) was unreasonable under the circumstances there presented. In this case, the arrest preceded the search and there is no question of entry, the search being limited to the person of the petitioner.

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